

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

_____)	
In the Matter of)	Docket No. OTS AP 94-32
)	
ROBERT GILLAM,)	OTS Order No. <u>AP 95-01</u>
a Former Owner, Director)	
and Officer)	Dated: <u>January 5, 1995</u>
)	
of)	
)	
HOME SAVINGS BANK,)	
Anchorage, Alaska)	
)	
Respondent.)	
_____)	

STIPULATION AND CONSENT BY ROBERT GILLAM

WHEREAS, the Office of Thrift Supervision ("OTS"), has commenced the above-captioned administrative proceeding against ROBERT GILLAM ("GILLAM") pursuant to Section 8 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818, by issuing and serving a written notice of charges ("Notice of Charges") (OTS No. AP 94-32) which charges that grounds exist to issue against GILLAM a prohibition order, pursuant to 12 U.S.C. 1818(e), and a cease and desist/affirmative relief order, pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, GILLAM, to avoid the time and expense of the pending administrative litigation, and, without either admitting or denying the allegations in the Notice of Charges, and for purposes of settling this matter only, now wishes to settle the OTS' prohibition and cease and desist charges against him, and is willing to stipulate and consent to the OTS' issuance to him of

the accompanying CONSENT ORDER OF PROHIBITION AND FOR AFFIRMATIVE RELIEF (the "Order").

NOW, THEREFORE, in consideration of the foregoing premises and for purposes of this settlement only, GILLAM enters into this Stipulation and Consent ("Stipulation"), hereby stipulating and agreeing as follows:

1. Consent.

GILLAM consents to the issuance by the OTS of the Order in consideration of the settlement, compromise and resolution of the charges contained in the Notice of Charges. GILLAM further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of the law.

2. Jurisdiction.

a. Home Savings Bank ("HOME" or "BANK") was an Alaska-chartered savings association which maintained its principal place of business in Anchorage, Alaska. HOME was a "savings association" as defined by Section 2(4) of the HOLA, as amended by Section 301 of the FIRREA, 12 U.S.C. § 1462(4), and Section 3(b) of the FDIA, as amended by Section 204 of the FIRREA, 12 U.S.C. § 1813(b), and was an "insured depository institution" as defined by Section 3(c) of the FDIA, as amended by Section 204 of the FIRREA, 12 U.S.C. § 1813(c).

b. Until August 9, 1989, the accounts of HOME were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") pursuant to Section 403(b) of the National Housing Act

("NHA"), 12 U.S.C. § 1726(b), by reason of which HOME was an "insured institution" within the meaning of the NHA.

c. As of August 9, 1989, pursuant to the provisions of FIRREA, the insurance of the accounts for HOME was transferred to the Federal Deposit Insurance Corporation ("FDIC").

d. Until August 9, 1989, the Federal Home Loan Bank Board ("FHLBB"), as operating head of the FSLIC, was the regulatory agency with jurisdiction over HOME and its officials pursuant to Sections 403 and 407 of the NHA, 12 U.S.C. §§ 1726, 1730.

e. As of August 9, 1989, pursuant to 12 U.S.C. § 1813(q), the OTS succeeded to the interests of the FSLIC with respect to the supervision and regulation of all savings associations, and thus became the "appropriate Federal banking agency" with jurisdiction over HOME, and all of its institution-affiliated parties and/or alternatively, all "person(s) participating in the conduct of the affairs" of such institution.

f. GILLAM was a principal shareholder, Chairman of the Board and Chief Executive Officer ("CEO") of HOME. GILLAM is an "institution-affiliated party" as the term is defined in 12 U.S.C. § 1813(u) and a "person participating in the conduct of the affairs" under 12 U.S.C. § 1730(e)(1986). As such, GILLAM is subject to the OTS's authority to maintain an order of prohibition and for affirmative relief.

g. Authority to remove and/or prohibit participation in the affairs of any insured institution and to direct affirmative

relief for acts that occurred before FIRREA was enacted was transferred to the Director of OTS by 12 U.S.C. § 1462a(e).

h. Pursuant to Section 3(q) of the FDIA, as amended by Section 204 of FIRREA, 12 U.S.C. § 1813(g), the OTS is the "appropriate Federal banking agency" with jurisdiction over HOME, persons participating in the affairs of HOME and its institution-affiliated parties.

i. The Director of the OTS, or his designee, has the authority to initiate administrative proceedings to determine whether to issue an order of prohibition and for affirmative relief pursuant to Section 5(d)(1)(A) of the HOLA, as amended by Section 301 of the FIRREA, 12 U.S.C. § 1464(d)(1)(A), 12 U.S.C. §§ 1730(e) and (g), and Sections 8(b) and (e) of the FDIA, as amended by FIRREA, 12 U.S.C. §§ 1818(b) and (e).

3. Finality.

The Order is issued under Sections 8(b) and 8(e) of the FDIA, 12 U.S.C. § 1818(b) and (e). Upon its issuance by the OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

4. Waivers.

a. GILLAM waives his right to an administrative hearing provided by Sections 8(e) and (i)(2) of the FDIA, 12 U.S.C. §§ 1818(e) and (i)(2);

b. GILLAM further waives any right to seek judicial review of the Order, including any such right provided by Section

3(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

c. GILLAM waives any and all claims for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

5. Other Government Actions Not Affected.

a. GILLAM acknowledges and agrees that the consent to the entry of the Order are for the purposes of resolving this OTS administrative action only, and do not release, compromise, settle, dismiss, resolve, affect, preclude or in any way affect any other actions, charges against, or liability of GILLAM or any other administrative, civil or criminal proceeding which may be or has been brought against GILLAM by the OTS or any other governmental agency; however, OTS agrees that it will not bring any other action against GILLAM based on allegations contained in the Notice.

6. Acknowledgment of Criminal Sanctions.

GILLAM acknowledges that, upon issuance of the Order, he will be a person "subject to an order under subsection (e) [of Section 8 of the FDIA]" for purposes of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), and acknowledges that said Section 8(j) sets forth criminal penalties against any such person who knowingly participates, directly or indirectly, in any manner in an activity specifically prohibited by the Order, including any activity prohibited by 12 U.S.C. § 1818(e)(6).

7. Miscellaneous.

a. The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America.

b. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS' predecessors, successors and assigns.

c. The section and paragraph headings in this Stipulation and in the Order are for convenience only, and such headings shall not effect the interpretation of this Stipulation and Order.

d. This Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters set forth in the Notice of Charges, and constitute the sole agreement of the parties with respect to such subject matters.

WHEREFORE, GILLAM executes this Stipulation intending to be legally bound thereby.

Accepted by:

OFFICE OF THRIFT SUPERVISION

By: 

ROBERT GILLAM

By: 

Jonathan L. Fiechter
Acting Director

Dated: December 21st, 1994

Dated: ~~December~~ January 5, ~~1994~~ 1995

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UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of)

ROBERT GILLAM,)
a Former Owner, Director)
and Officer)

of)

HOME SAVINGS BANK,)
Anchorage, Alaska)

Respondent.)
_____)

Docket No. OTS AP 94-32

OTS Order No. AP 95-01

Dated: January 5, 1995

CONSENT ORDER OF PROHIBITION
AND FOR AFFIRMATIVE RELIEF

WHEREAS, ROBERT GILLAM ("GILLAM") was an officer, director and shareholder of HOME SAVINGS BANK ("Home Savings") which was a federally insured savings and loan association that maintained its home office in Anchorage, Alaska; and

WHEREAS, the Office of Thrift Supervision ("OTS") issued a Notice of Charges on June 24, 1994, commencing the above-captioned administrative proceeding, which seeks issuance against GILLAM of an order of prohibition and to cease-and-desist and direct affirmative relief pursuant to provisions of Section 8 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818; and

WHEREAS, GILLAM, by his execution of the accompanying Stipulation and Consent ("Stipulation"), without either admitting or denying any wrongdoing and for purposes of settling this matter only, has consented and agreed to issuance by the OTS of

this CONSENT ORDER OF PROHIBITION AND FOR AFFIRMATIVE RELIEF ("Order"), pursuant to Section 8(b) and 8(e) of the FDIA, 12 U.S.C. §§ 1818(b) and 1818(e).

NOW THEREFORE, IT IS ORDERED, pursuant to Sections 8(b) and 8(e) of the FDIA, 12 U.S.C. §§ 1818(b) and 1818(e), that:

1. GILLAM, except upon the prior written consent of the OTS (acting through its Director or an authorized representative thereof) and any other "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(a) Hold any office in, or participate in any manner in the conduct of the affairs of, any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A) (the Paragraph (7)(A) Institutions"), including, but not limited to:

- (i) Any insured depository institution, e.g., savings and loan associations, savings bank, national banks, trust companies, and other banking institutions;
- (ii) Any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3) and 1818(b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;
- (iii) Any insured credit union under the Federal Credit Union Act, 12 U.S.C. § 1781 et seq.;
- (iv) Any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. § 2001 et seq.;

(v) Any appropriate Federal depository institution regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(A);

(vi) The Federal Housing Finance Board and any Federal Home Loan Bank; and

(vii) The Resolution Trust Corporation.

(b) Solicit, procure, transfer, attempt to transfer, vote or attempt any proxy, consent or authorization with respect to any voting rights in any Paragraph (7)(A) Institution. The foregoing shall not limit in any way the performance by GILLAM of services as a registered investment advisor, provided, however, that such services on behalf of an insured institution do not involve the exercise of discretion in connection with or control over the assets of an insured institution or the making of loan underwriting decisions or participation in the conduct of the affairs of an insured institution, or make him an institution affiliated party within the meaning of 12 U.S.C. § 1813(u);

(c) Violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q); or

(d) Vote for a director, except that GILLAM, pursuant to 12 C.F.R. § 574.2(a), may, in his role as registered investment advisor, vote for a director if he:

(i) Votes the stock only upon instruction from the beneficial owner, and

(ii) Does not provide the beneficial owner with advice concerning the voting of such stock; or

(e) Serve or act as an "institution-affiliated party," as that term is defined at 12 U.S.C. § 1813(u).

2. GILLAM shall not commit, or aid and abet the commitment of any violation of a written agreement, breach of fiduciary duty or any unsafe and unsound practice in connection the conduct of the business of any insured depository institution as defined at 12 U.S.C. § 1818(e)(7)(A).

3. Due to issuance of this Order, GILLAM is a person "subject to an order in effect under subsection (e) of [Section 8 of the FDIA]" for purposes of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j).

4. GILLAM shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

5. The Stipulation is made a part hereof and is incorporated herein by this reference.

6. This Order is and shall become effective on the date it is issued, as shown in the caption above, and it shall remain effective and enforceable except to such extent as it is modified or terminated by action of the OTS.

Dated:

January 5, 1995

OFFICE OF THRIFT SUPERVISION

By:

Jonathan L. Flechter
Jonathan L. Flechter
Acting Director

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